

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Richard P., by and for R.P. , and Denise L., by)	
and for K.L. ,)	
)	
Plaintiffs)	
)	
v.)	
)	
SCHOOL DISTRICT OF THE CITY OF)	Civil Action No. 03-390 Erie
ERIE, PENNSYLVANIA; JANET WOODS,)	
Individually and in her Capacity as Principal of)	
Strong Vincent High School; and LINDA L.)	
CAPPABIANCA , Individually and in her)	
Capacity as Assistant Principal of Strong)	
Vincent High School,)	
)	
Defendants)	JURY TRIAL DEMANDED

DEFENDANTS' AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants The School District of the City of Erie, Pennsylvania, Janet M. Woods, and Linda L. Cappabianca, respectfully submit the following Defendants' Amended Motion for Partial Summary Judgment pursuant to Fed.R.Civ.P. 56(c) and (d).

1. This action arises out of events that took place at and near Strong Vincent High School ("Strong Vincent") during the 2001-2002 school year at a time when plaintiffs K.L. and R.P. were students in the seventh grade at Strong Vincent.

2. Defendant The School District of the City of Erie, Pennsylvania ("ESD") owns and operates, and in 2001-2002 owned and operated, Strong Vincent. Defendant Janet M. Woods was the Principal of Strong Vincent and defendant Linda L. Cappabianca was an Assistant Principal assigned to the middle school of Strong Vincent during that school year.

3. Plaintiffs allege that they were sexually assaulted by fellow students during that school year, which assaults were preceded and succeeded by verbal and physical harassment of

them by fellow students. At a time following the sexual assaults plaintiffs were placed in Sarah Reed Children's Center, located in Erie, Pennsylvania and the assailants were criminally prosecuted for the assaults.

4. Plaintiffs expressly assert three causes of action against defendants regarding these events: (a) that defendant ESD violated Title IX of the Education Amendments of 1972, 20 U.S.C. §1681, *et seq.* ("Title IX"); (b) that defendants Woods and Cappabianca violated the Equal Protection Clause and the Equal Rights Amendment of the Pennsylvania Constitution; and (c) that defendant Cappabianca committed the tort of defamation with respect to plaintiff R.P. in violation of Pennsylvania common law. Plaintiffs may also be contending that defendant ESD violated the Individuals with Disabilities Education Act, 20 U.S.C. §1401, *et seq.* ("IDEA") and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.

5. It is respectfully submitted that: (a) plaintiffs cannot satisfy their burden of proving those facts necessary to establish the liability of defendant ESD under Title IX for the sexual assaults and the harassment that preceded those assaults; (b) plaintiffs cannot satisfy their burden of proving those facts necessary to establish the liability of defendant Woods and defendant Cappabianca under the Equal Protection Clause and Equal Rights Amendment of the Pennsylvania Constitution for the sexual assaults and the harassment that preceded and succeeded those assaults; and (c) the Court is without subject matter jurisdiction to address any claim by plaintiffs that their placement at Sarah Reed violated IDEA or the Rehabilitation Act.

WHEREFORE, defendants The School District of the City of Erie, Pennsylvania, Janet M. Woods, and Linda L. Cappabianca respectfully request that the Court enter an order pursuant to Fed.R.Civ.P. 56(c) and (d) determining that plaintiffs' claims (1) under Title IX against defendant ESD for damages for the sexual assaults and the harassment that preceded those assaults, (2) under the Equal Protection Clause and the Equal Rights Amendment of the

Pennsylvania Constitution against defendant Woods and defendant Cappabianca for damages for the sexual assaults and the harassment that preceded and succeeded those assaults and (3) under IDEA and the Rehabilitation Act for damages for the placement of plaintiffs at Sarah Reed, may not proceed to trial, and entering summary judgment for defendant Woods and against plaintiffs.

Respectfully submitted,

/s/ James T. Marnen

James T. Marnen

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Richard P., by and for **RACHEL P.**, and
Denise L., by and for **KRISTINA L.**,

Plaintiffs

V.

SCHOOL DISTRICT OF THE CITY OF ERIE, PENNSYLVANIA; JANET WOODS, Individually and in her Capacity as Principal of Strong Vincent High School; and **LINDA L. CAPPABIANCA,** Individually and in her Capacity as Assistant Principal of Strong Vincent High School,

Defendants

Civil Action No. 03-390 Erie

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of August, 2005, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

/s/ James T. Marnen
James T. Marnen